LEWIS BRISBOIS
LEWIS BRISBOIS BISGAARD & SMITH LLP

Tim J. Yianne
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March 28, 2019

File No. 34569.32

VIA U.S. MAIL

Mark A. McGrew, Clerk
Logan County Circuit Court
Logan County Courthouse
300 Stratton Street, Room 311
Logan, WV 25601

Re: Persinger & Associates, Inc. v. Logan County Board of Education, et al.
Civil Action No. 19-C-21

Dear Mr. McGrew:

Please find enclosed "Defendant Williamson Shriver Architects, Inc.'s Answer to Verified Complaint" together with two copies of a Civil Case Information Sheet for filing in the above-styled civil action.

If you have any questions about the enclosures, please contact me. Thank you for your assistance with this court filing.

Sincerely,

Tim J. Yianne of
LEWIS BRISBOIS BISGAARD & SMITH LLP

TJY:jw
Encl.
cc: Charles M. Johnstone, II, Esq.
Kenneth E. Webb, Jr., Esq.

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA	
PLAINTIFFS: **PERSINGER & ASSOCIATES, INC., a West Virginia corporation,** DEFENDANT: **LOGAN COUNTY BOARD OF EDUCATION, and WILLIAMSON SHRIVER ARCHITECTS, INC., a West Virginia corporation.**	CASE NUMBER: **19-C-21** **HONORABLE ERIC H. O'BRIANT**

II. TYPE OF CASE:

- ■ General Civil
- ☐ Mass Litigation (As defined in T.C. R. Rule XIX (c)
  - ☐ Asbestos
  - ☐ Carpal Tunnel Syndrome
  - ☐ Diet Drugs
  - ☐ Environmental
  - ☐ Industrial Hearing Loss
  - ☐ Silicone Implants
  - ☐ Other: _____
- ☐ Habeas Corpus/Other Extraordinary Writ
- ☐ Other: _____
- ☐ Adoption
- ☐ Administrative Agency Appeal
- ☐ Civil Appeal from Magistrate Court
- ☐ Miscellaneous Civil Petition
- ☐ Mental Hygiene
- ☐ Guardianship
- ☐ Medical Malpractice

III. JURY DEMAND: ■ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY *(MONTH/YEAR):* Unknown

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☐ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ■ Other: Unknown at this time

Attorney Name: Tim J. Yianne (WVSB 8623)

Firm: Lewis Brisbois Bisgaard & Smith LLP
222 Capitol Street, Fifth Floor
Address: Charleston, West Virginia 25301
Telephone: (304) 553-0166

Dated: March 28, 2019

☐ *Pro Se*

Representing:

☐ *Plaintiff*
■ *Defendant* – ***Williamson Shriver Architects, Inc.***
☐ *Cross-Complainant* ☐ *Cross-Defendant*

Signature

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA		
PLAINTIFFS:	**PERSINGER & ASSOCIATES, INC., a West Virginia corporation,**	CASE NUMBER: **19-C-21**
DEFENDANT:	**LOGAN COUNTY BOARD OF EDUCATION, and WILLIAMSON SHRIVER ARCHITECTS, INC., a West Virginia corporation.**	**HONORABLE ERIC H. O'BRIANT**

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Dated: March 28, 2019

☐ *Pro Se*

Representing:

☐ *Plaintiff*
■ *Defendant* – ***Williamson Shriver Architects, Inc.***
☐ *Cross-Complainant* ☐ *Cross-Defendant*

Signature

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

PERSINGER & ASSOCIATES, INC.,
a West Virginia Corporation,

Plaintiff,

v. **CIVIL ACTION NO. 19-C-21**
HONORABLE ERIC H. O'BRIANT

LOGAN COUNTY BOARD OF EDUCATION, and
WILLIAMSON SHRIVER ARCHITECTS, INC.,
a West Virginia Corporation,

Defendants.

DEFENDANT WILLIAMSON SHRIVER
ARCHITECTS, INC.'S ANSWER TO VERIFIED COMPLAINT

COMES NOW the Defendant Williamson Shriver Architects, Inc. (hereinafter "Defendant"), by and through counsel, Tim J. Yianne and Lewis Brisbois Bisgaard & Smith, LLP, and for its answer to Plaintiff's Verified Complaint (hereinafter "Complaint") states as follows:

GENERAL RESPONSE AND PREAMBLE

This responsive pleading has been prepared, served, and filed by counsel for the Defendant under the West Virginia Rules of Civil Procedure. As permitted by Rule 8, defenses to the claims made in the Complaint are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of apparent consistency and are based both on legal and equitable grounds. As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

In order to preserve important legal rights and protection, the Defendant sets forth below certain affirmative defenses which, based upon the information set forth in the Complaint, it believes does or may apply to some or all of the claims raised therein. The Defendant reserves the right to

withdraw, modify or amend some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery in this civil action.

ANSWER

In answer to the separate paragraphs of Plaintiff's Complaint, Defendant states as follows:

1. Defendant is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 1 of the Complaint, and therefore denies the same.
2. Defendant is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.
3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.
4. For its Answer to Paragraph 4 of the Complaint, Defendant states that Paragraph 4 sets forth, or attempts to set forth, legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations set forth, or attempted to be set forth, in Paragraph 4.
5. In response to Paragraph 5 of the Complaint, Defendant states that all bid and contract documents with respect to the construction of the "New Chapmanville Intermediate School" ("Project") shall speak for themselves, and denies any allegations inconsistent therewith.
6. Paragraph 6 of the Complaint asserts legal conclusions to which no response is required. To the extent a response is deemed required, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves in terms of duties and obligations, and denies any allegations inconsistent therewith.
7. Paragraph 7 of the Complaint asserts legal conclusions to which no response is required. To the extent a response is deemed required , Defendant states that all contract documents with

respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

8. Paragraph 8 of the Complaint asserts legal conclusions to which no response is required. Furthermore, Paragraph 8 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 8.

9. Paragraph 9 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 9 of the Complaint.

10. In response to the allegations in Paragraph 10 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

11. In response to the allegations in Paragraph 11 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

12. In response to the allegations in Paragraph 12 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

13. Paragraph 13 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently

without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 14 of the Complaint.

15. In response to the allegations in Paragraph 15 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

16. Defendant denies the allegations in Paragraph 16 of the Complaint.

17. In response to the allegations in Paragraph 17 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

18. Defendant denies the allegations in Paragraph 18 of the Complaint. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

19. Paragraph 19 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations in Paragraph 20 of the Complaint. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

21. In response to Paragraph 21 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 21.

22. In response to Paragraph 22 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 22.

23. In response to Paragraph 23 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 23. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

24. In response to Paragraph 24 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

25. In response to Paragraph 25 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

26. Defendant denies the allegations in Paragraph 26 of the Complaint.

27. In response to Paragraph 27 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all recommendations and assessment of liquidated damages

against Plaintiff are justified. Defendant denies any wrongdoing alleged against it in Paragraph 27.

28. In response to Paragraph 28 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith. Defendant denies any wrongdoing alleged against it in Paragraph 28.

29. In response to Paragraph 29 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant denies any wrongdoing alleged against it in Paragraph 29.

30. In response to Paragraph 30 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant denies any wrongdoing alleged against it in Paragraph 30.

31. In response to Paragraph 31 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith. Defendant denies any wrongdoing alleged against it in Paragraph 31.

32. Paragraph 32 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 32 of the Complaint.

33. Defendant hereby incorporates its answers to Paragraphs 1-32 of the Complaint as if fully set forth herein.

34. Paragraph 34 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 34 of the Complaint.

35. Paragraph 35 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 35 of the Complaint, including all subparts.

36. Paragraph 36 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 36 of the Complaint.

37. Paragraph 37 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 37 of the Complaint, including all subparts.

38. Paragraph 38 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 39 of the Complaint.

40. Defendant hereby incorporates its answers to Paragraphs 1-39 of the Complaint as if fully set forth herein.

41. Paragraph 41 of the Complaint asserts legal conclusions to which no response is required. To the extent a response is required, Defendant states all contract documents with respect to the Project and any controlling West Virginia law speaks for themselves, and denies any allegations inconsistent therewith.

42. Defendant denies the allegations in Paragraph 42 of the Complaint, including all subparts.

43. Defendant denies the allegations in Paragraph 43 of the Complaint.

44. Defendant denies the allegations in Paragraph 44 of the Complaint.

45. Defendant denies that Plaintiff is to any relief sought in the *ad damnum* clause immediately following Paragraph 44 the Complaint to the extent that relief is sought from Defendant.

46. Defendant denies any and all allegations in the Complaint that are not specifically admitted herein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's fail to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims may be barred by a lack of standing.

THIRD DEFENSE

Plaintiff's claims may be barred by the doctrines of waiver and/or estoppel.

FOURTH DEFENSE

Plaintiff's claims may be barred by the doctrine of consent.

FIFTH DEFENSE

Plaintiff's claims may be barred by the doctrine of satisfaction.

SIXTH DEFENSE

Plaintiff's claims may be barred by the doctrine of release.

SEVENTH DEFENSE

Plaintiff's claims may be barred by the doctrine of setoff.

EIGHTH DEFENSE

Plaintiff's claims may be barred by the doctrines of *res judicata* and/or collateral estoppel.

NINTH DEFENSE

Plaintiff's claims may be barred by the applicable statute of limitations.

TENTH DEFENSE

Plaintiff's claims may be barred by the doctrine of laches.

ELEVENTH DEFENSE

Plaintiff's claims may be barred by a failure of consideration.

TWELFTH DEFENSE

Plaintiff's claims may be barred by the doctrines of payment, ratification and/or acquiescence.

THIRTEENTH DEFENSE

Plaintiff's damages are the result of Plaintiff's own failure to manage and prosecute the work on the Project.

FOURTEENTH DEFENSE

Plaintiff expressly assumed the risk of extra costs incurred to meet the Project deadlines.

FIFTEENTH DEFENSE

Plaintiff's Complaint contains insufficient information to permit Defendant to raise all appropriate defenses, therefore Defendant reserve the right to amend its pleading as the facts of this civil action are fully developed through the discovery process.

JURY DEMAND

Defendant respectfully requests a trial by jury on all issues so triable.

PRAYER

WHEREFORE, Defendant, Williamson Shriver Architects, Inc., prays that the Plaintiff's Complaint be dismissed, with prejudice, and held for naught; that Plaintiff recovers nothing of Defendant; that Defendant recovers its costs, expenses of suit, and reasonable attorney's fees necessary in defending said Complaint; and for such other and further relief, whether legal or equitable in character, as to which Defendant may be entitled.

WILLIAMSON SHRIVER ARCHITECTS, INC.

By Counsel:

Tim J. Yianne, Esquire (WVSB #8623)
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Charleston, WV 25301
(304)553-0166/(304)932-0265 (F)
tim.yianne@lewisbrisbois.com

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

PERSINGER & ASSOCIATES, INC.,
a West Virginia Corporation,

Plaintiff,

v.

CIVIL ACTION NO. 19-C-21
HONORABLE ERIC H. O'BRIANT

LOGAN COUNTY BOARD OF EDUCATION, and
WILLIAMSON SHRIVER ARCHITECTS, INC.,
a West Virginia Corporation,

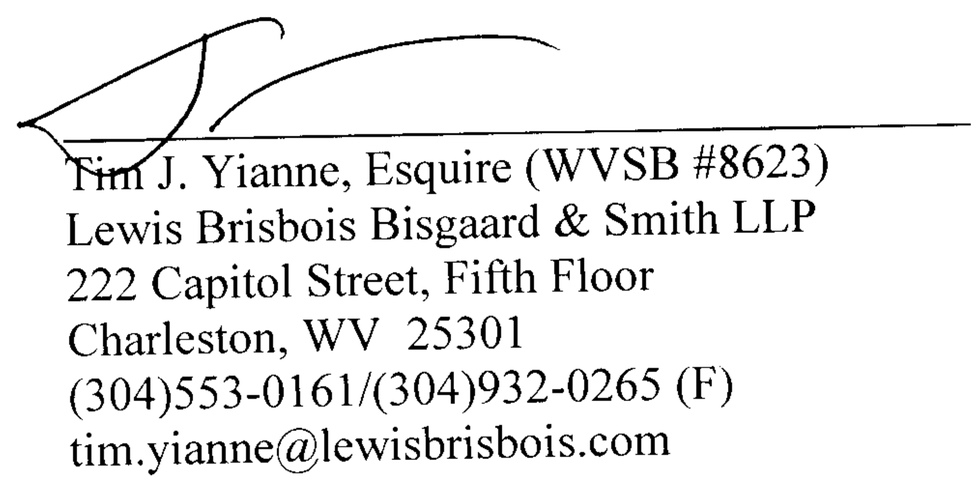
Defendants.

CERTIFICATE OF SERVICE

I, Tim J. Yianne, do hereby certify that I have served the foregoing "Defendant Williamson Shriver Architects, Inc.'s Answer to Plaintiff's Verified Complaint" on counsel of record by mailing true and correct copies of the same to them in the regular course of the United States Mail, postage prepaid, this 28th day of March, 2019, as follows:

Charles M. Johnstone, II, Esq.
Johnstone & Gabhart, LLP
P. O. Box 313
Charleston, WV 25321
Counsel for Plaintiff

Kenneth E. Webb, Jr., Esq.
Bowles Rice, LLP
P. O. Box 1386
Charleston, WV 26505
Counsel for Logan County Board of Education



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